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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/877,040	06/11/2001	Mohan Kalkunte	108339-00071	9814
32294	7590	07/27/2005	EXAMINER	
SQUIRE, SANDERS & DEMPSEY L.L.P.			PHAN, TRI H	
14TH FLOOR			ART UNIT	
8000 TOWERS CRESCENT			PAPER NUMBER	
TYSONS CORNER, VA 22182			2661	

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SM

<b>Office Action Summary</b>	<b>Application No.</b> 09/877,040	<b>Applicant(s)</b> KALKUNTE, MOHAN	
	<b>Examiner</b> Tri H. Phan	<b>Art Unit</b> 2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 and 9-13 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment/Arguments***

1. This Office Action is in response to the Response filed on July 14<sup>th</sup>, 2005. Claim 8 is now canceled. Claims 1-7 and 9-13 are now pending in the application.

### ***Terminal Disclaimer***

2. The terminal disclaimer filed on 7/14/2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on the Application No. 09/877,010 has been reviewed and is accepted.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

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provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 1-7 and 9-13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 09/955,985. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

- In regard to claims 1-3 and 9-11 of '040', the claimed invention (claims 1-3 and 6-8) of the copending Application '985' also discloses the means and method of handling data packets in a series of network switches, the method comprising the steps of: receiving an incoming data packet at a data port of a first switch of the series of network switches; resolving a stack tag from a header of the incoming data packet; modifying the header of the incoming packet; forwarding the incoming data packet to at least a second switch of the series of network switches, on a stacked connection operating at a first data rate, based on the stack tag and the egress port; and remodifying the header of the incoming packet when the egress port is one of a series of data ports of a particular switch of the series of switches (see claim 1). The copending Application '985' claim fails to disclose the means and method for "*resolving the destination address of the incoming packet*" in determining the egress port. However, the copending Application '985'

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claim does disclose the method for “*determining whether an incoming data packet is a unicast packet, a multicast packet or an IP multicast packet; and to search the address resolution lookup and layer three IP lookup tables to find an egress port for the incoming data packet*”. Such claimed features would have been obvious to one having ordinary skill in the art to be applied on the claimed invention of the copending Application as “*resolving the destination address of the incoming packet*”; since wherein, it is obvious that the unicast packet, the multicast packet or the IP multicast packet are the destination address of the incoming packet using to search in the lookup table and to find the egress port for transmitting to the network.

- Regarding claim 6 of ‘040’, the claimed invention (claims 4-5) of the copending Application ‘985’ also discloses the network switch for network communications, the network switch comprising: a first data port interface, the first data port interface supporting at least one data port transmitting and receiving data at a first data rate; a second data port interface, the second data port interface supporting at least one data port transmitting and receiving data at a second data rate, different from the first data rate; a memory communicating with the first data port interface and the second data port interface; a memory management unit, the memory management unit for communicating data from the first data port interface and the second data port interface and the memory; and a communication channel, with the communication channel communicating data and messaging information between the first data port interface, the second data port interface, and the memory management unit, wherein the first data port interface is configured to communicate with a second switch at the first data rate and the second data port interface is configured to communicate with a third switch at the second data rate and the switch

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is configured to resolve a stack tag from a header of an incoming data packet and forwards the incoming data packet to one of the second and third switches based on the resolved stack tag (see claim 4); wherein the switch is configured to modify the header of the incoming data packet before forwarding the incoming data packet to another switch (see claim 5). However, the copending Application '010' claim fails to disclose using different type switches, e.g. *'first and second type switches'*, in communicate with the first and second data port interfaces. Such claimed features would have been obvious to one having ordinary skill in the art to be applied on the claimed invention of the copending Application as second switch, e.g. *"first type switches"*, and third switch, e.g. *"second type switches"*.

- In regard to claims 4-5, 7 and 12-13, the claimed invention (claims 4-5) of the copending Application '985' fails to explicitly disclose about the specific rate such as "first data rate is 2.5 Gigabits" and the "second data rate is 10 Gigabits", which is "four times" of the first data rate. However, such specific data rates are depending on system by system designed by the system engineering as designed choices. Therefore, it would have been obvious to one having ordinary skill in the art to be applied on the claimed invention of the copending Application as "first data rate is 2.5 Gigabits" and the "second data rate is 10 Gigabits".

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Co et al.** (U.S.6,396,841), **Jain et al.** (U.S.6,765,914), **Kalkunte et al.** (U.S.6,813,268), **DiPlacido, Bruno** (U.S.6,226,292) and **Kadambi et al.** (U.S.6,850,521) are all cited to show devices and methods for improving the switching architectures for high speed data rate in the telecommunication networks, which are considered pertinent to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri H. Phan, whose telephone number is (571) 272-3074. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on (571) 272-3126.

**Any response to this action should be mailed to:**

**Commissioner of Patents and Trademarks**

Washington, D.C. 20231

**or faxed to:**

**(571) 273-8300**

Hand-delivered responses should be brought to Randolph Building, 401 Dulany Street, Alexandria, VA 22314.

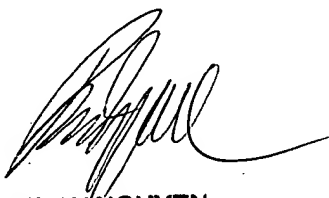
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office, whose telephone number is (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tri H. Phan  
July 23, 2005



**BRIAN NGUYEN**  
**PRIMARY EXAMINER**